



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OPC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice issued by the landlord. The hearing was also convened to hear the landlord's application seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause that had been issued on February 28, 2012. The parties appeared and gave testimony during the conference call.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Should the One Month Notice to End Tenancy for Cause be cancelled?
- Is the landlord entitled to an Order of Possession based on the One Month Notice to End Tenancy for Cause?

Background and Evidence

Submitted into evidence was, a copy of the One Month Notice to End Tenancy for Cause dated May 22, 2013, indicating that the tenancy was being ended because the tenant or a person permitted on the residential property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

- engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, and
- has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Also in evidence was a copy of the tenancy agreement, a copy of two witness statements, copies of communications, written testimony and a copy of a receipt.

The landlord testified the tenancy began in October 2012 with rent of \$950.00 and security deposit of \$475.00.

Significantly Interfered With and Unreasonably Disturbed

The landlord testified that the tenants have been disturbing others in the complex because they have a lot of people always dropping by. When asked what the tenant's guests had done or said to disturb other residents, the landlord stated that the residents reported feeling fearful or uncomfortable around these people. The landlord was not able to describe specific conduct that may have bothered the other residents. The landlord pointed out that the tenants had different people, some using bicycles as transportation who show up carrying garbage bags.

The tenant denied that there were frequent comings and goings of visitors after hours. The tenant testified that she is the only one who ever leaves the rental unit in the evening. The tenant testified that they have no idea why others in the complex are fearful or uncomfortable around them.

The landlord testified that they also received a complaint about a fight or commotion that one resident alleged was heard coming from the tenant's suite. The unsigned letter complaint in evidence made reference to this incident that purportedly occurred on March 6, 2013, with "*lots of banging on walls and yelling*".

In regard to the alleged incident that caused noise, the tenant pointed out that the person causing the disturbance was their neighbour and the commotion he caused had nothing to do with the tenant.

The landlord testified that another complaint in the written complaint letter was about the police coming to one of the renter's units looking for the tenant. According to the letter, this had upset the resident.

The tenant admitted that police were looking for her to let her know that a family member had passed away, and apparently they had to come twice because she was

not there the first time. The tenant testified that she did not consider this to be an unreasonable disturbance or interference and the tenant felt that it was not her fault if another resident chose to take issue with this.

The landlord admitted that they did not have personal knowledge of the incidents and issues being complained about. However, according to the landlord, they do believe that the other residents have reported the tenant's conduct and activities accurately. The landlord pointed out that they are getting complaints from all three of the other rental units and they are of the opinion that this would indicate that the tenant is doing something wrong.

The landlord testified that the other renters are afraid of reprisals from the tenants for complaining and this is why one of the complaint letters submitted was not dated nor signed. The landlord testified that some of their longer-term renters are prepared to leave if these tenants are allowed to remain.

Illegal Activity Affecting Safety, Security or Physical Well-Being of Others

The landlord testified that they received a complaint about thefts and vandalism suffered by residents in the complex. The landlord submitted a signed and dated letter from one of the renters in the complex with details about the level of theft and vandalism that they have endured. The landlord stated that, although this letter does not identify the tenants as perpetrators of the criminal activity, the tenants and their associates are suspected.

The tenant testified that they have had no involvement in any vandalism or crime. The tenant pointed out that they have been victims of criminal activity too.

Breach of Material Term

The landlord testified that there is a term in the tenancy agreement that prohibits the tenant or their guests from smoking inside the rental unit. The landlord provided a copy of the tenancy agreement with a clear term against smoking inside the unit. The landlord testified that they have received repeated complaints from other residents about the tenant smoking tobacco and marijuana in their suite.

The landlord made reference to the copy of the undated, unsigned hand-written letter that alleges, amongst other things, that the tenant's are smoking inside their unit and argues that this fact is obvious because the smell comes through the heating vents.

The landlord testified that on one occasion they also personally witnessed one person holding a cigarette as they exited the rental unit and on another occasion they observed a visitor preparing to light up inside the home.

The landlord testified that verbal and written warnings were given to the tenant in the past. No copies of the warnings were in evidence. However, the landlord pointed out that they attempted to terminate this tenancy for cause on two separate occasions in the past without success, so the tenant is aware that the landlord will not tolerate smoking in the unit.

When asked about recent transgressions regarding smoking, the landlord stated that they had not been to the complex lately, but they were certain that the tenants and their guests had not ceased smoking because the tenants are “*chain smokers*”. With respect to arranging inspections to determine whether or not the complaints were valid, the landlord stated that it wouldn’t do any good because the tenant’s would open windows and conceal the evidence. The landlord testified that they fully believe the complaints of the other residents in the complex. The landlord pointed out that the tenant had intentionally misled them when they negotiated the tenancy by claiming to be nonsmokers.

The tenant testified that they have never smoked inside the unit, nor do they allow others to do so. The co-tenant who attended the hearing stated that she personally did not smoke at all. The tenant acknowledged that a visitor may have been holding a cigarette, but it was not lit until the visitor went outside. The tenant indicated in their application that another resident in the complex dislikes them and has falsely reported, to the landlord, that the tenant was smoking in their unit. The tenant denied that they received repeated written warnings about smoking.

Analysis

In regard to the landlord’s allegation that the tenants have been disturbing others in the complex due to the frequency of their guests, I find that section 30 of the Act states that a landlord must not unreasonably restrict access to residential property by

- (a) the tenant of a rental unit that is part of the residential property, or
- (b) a person permitted on the residential property by that tenant.

(my emphasis)

I find that it would be a violation of section 30 of the Act if the landlord did not protect the freedom of all tenants to entertain guests of their choosing, provided the conduct of these visitors does not contravene the Act.

Moreover, I find that section 28 of the Act protects a tenant’s right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section,
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that this tenant is entitled to their quiet enjoyment of their suite and the common areas of the property.

That being said, I also find that the tenant is not permitted to deprive *other* renters of their rights to quiet enjoyment too. However, I find that the landlord has not provided sufficient evidence to show that the conduct of the tenant or their guests violated the Act or agreement in any way, nor that they had deprived anyone of their right to quiet enjoyment.

While I find that the landlord is dutifully following their responsibilities under the Act to receive and act on genuine complaints from their renters, the fact that one or more complaints have been received about an individual tenant or an issue, does not function as irrefutable proof that these complaints are automatically valid.

In regard to the landlord's allegation that the tenant has engaged in illegal activities affecting safety, security or physical well-being of others, I find that no substantive proof was submitted, nor described that would show that the tenant or their visitors have been involved in any illegal activities that affected the safety, security or physical well-being of others. I find that, the fact that vandalism and crimes have occurred in the vicinity, is not verification that the tenant was involved in these.

In regard to the allegation that the tenant breached a material term of the tenancy agreement, I accept that there is a clear term in the tenancy agreement prohibiting smoking in the unit.

However, I find that the landlord has not provided sufficient evidentiary proof in to show that the tenant has been smoking inside the unit. I do accept the landlord's testimony that they received complaints from the other renters about the smell of smoke. I also find that the tenant denied the accusations made. I find that the weight of an unsigned complaint letter making allegations without detailed information such as dates, times and circumstances is negligible, particularly without the person making the accusation being present for cross examination. It is the landlord's burden of proof to establish that the tenant breached the material term and I find that they have not met the burden of proof.

In regard to the landlord's further allegation that the tenant failed to rectify the breach within a reasonable time, after being warned, the landlord must show that the tenant ignored the warnings and continued to breach the agreement.

Even if I accepted that the tenant was in repeated breach of the agreement by smoking inside the rental unit in the past, I find that the tenancy would not be ended for a breach of a material term if the tenant acted to rectify the breach. I find that the landlord has not adequately proven that the tenant is still smoking inside the unit, after the warnings.

Based on the evidence before me I find that the landlord has failed to present sufficient evidence to meet the criteria justifying the end of this tenancy under section 47 of the Act. Therefore, I find that the One Month Notice to End Tenancy for Cause dated May 22, 2013, must be cancelled and the landlord's application must be dismissed.

Based on the evidence and testimony, I hereby order that the One-Month Notice to End Tenancy for Cause dated May 22, 2013 is hereby cancelled and of no force nor effect.

I order that the tenant is entitled to be reimbursed the \$50.00 cost of the application and this is to be deducted from the next rental payment owed to the landlord as a one-time abatement.

Conclusion

The tenant is successful in their application and the One-Month Notice to End Tenancy for Cause is cancelled. The landlord is not successful in their application and the landlord's application is dismissed without leave.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 27, 2013

Residential Tenancy Branch